

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Connect America Fund

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WC Docket No.10-90 and No.14-93

**PETITION FOR LIMITED WAIVER OF
CAF PHASE II EVIDENTIARY REQUIREMENT**

R. M. Greene, Inc. d/b/a Cable TV of East Alabama ("CTVEA") hereby petitions the Commission, pursuant to Section 1.3 of the Commission's rules,¹ for a limited waiver of the Wireline Competition Bureau's ("Bureau") determination that under Phase II of the Connect America Fund ("CAF") challenging parties must produce evidence of actual or former customers in a census block in order to establish that the block is "served" for purposes of determining whether the price cap incumbent local exchange ("LEC") in that area is entitled to Phase II support.

I. INTRODUCTION

The Bureau's evidentiary requirement should be waived because application of the requirement will result in the disbursement of subsidies to price cap LECs to overbuild networks already deployed by CTVEA, an unsubsidized competitor. The Bureau has designated as "unserved" more than 242 census blocks in areas where CTVEA has deployed physical networks assets over which it offers broadband and voice services to the residents of those areas. As such, these areas do not lack access to broadband, and are not unserved. The Commission has

¹ 47 C.F.R. § 1.3.

determined that subsidizing overbuilds in such areas is a waste of public resources and harms competition. As such, good cause exists to grant this waiver request.

II. ARGUMENT

The Wireline Competition Bureau's Public Notice dated June 20, 2014 purports to impose an evidentiary requirement that challenging parties in the CAF Phase II proceeding present evidence of current or former customers in a census block in order to challenge the Bureau's determination that the block is unserved.² As a result, in those blocks where a challenging party has deployed physical assets to provide broadband and voice service, and offers such services in that area (but has no current or former customers), the Bureau's determination will result in a designation that the block is unserved. That, in turn, will permit the price cap incumbent LEC in that area to receive CAF Phase II support to deploy facilities that will be used to overbuild and compete directly with the unsubsidized competitor that has already deployed facilities to that area.

That outcome is inconsistent with the Commission's determination that broadband subsidies should not be directed to areas where unsubsidized competitors offer service. In the 2011 Connect America Funder Order the Commission determined that it would "exclude [from CAF funding] areas where an unsubsidized competitor offers broadband service..."³ Instead, the Commission determined that CAF support should only be directed to areas that "lack Internet access."⁴ This decision rests upon the sound policy determination that federal subsidies should

² See Public Notice, Wireline Competition Bureau Provides Guidance Regarding Phase II Challenge Process, WC Docket No. 10-90, DA 14-864 at ¶ 9 (rel. June 20, 2014) (hereafter "Public Notice").

³ See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 at ¶ 170 (2011) ("CAF Order").

⁴ *Connect America Fund*, Order, WC Docket No. 10-90, 29 FCC Rcd 181 at ¶ 17 (2014) (citing Phase I Order, 28 FCC Rcd at 7771-72, ¶ 15).

be directed to those areas where market forces have not provided sufficient incentives to deploy broadband to unserved areas. Accordingly, the Commission recognized that funding should not be directed to areas in which an unsubsidized competitor already offers service.

Concomitant to that principle is the recognition that the government should not create an uneven playing field by subsidizing the deployment of facilities in those areas where an unsubsidized competitor (relying on private capital) has already deployed facilities. The government should not be subsidizing providers to compete with unsubsidized competitors because such policies undermine competition and waste public resources. Further, such policies create a significant disincentive for broadband providers to raise private capital in order to deploy networks in unserved and underserved areas.

Good cause exists to waive the Bureau's evidentiary requirement because the problems previously articulated by the Commission, such as avoiding the potential subsidization of overbuilds and wasting public resources, will become an unfortunate reality in many areas served by CTVEA absent a waiver of the rule. CTVEA has deployed broadband and voice-capable network assets (i.e., physical plant and networking equipment) in 243 census blocks that will be treated as "unserved" under Phase II if the Bureau's evidentiary requirement is not waived. As the Commission has recognized, there may be circumstances where a provider has deployed broadband networks and is actively offering service, but does not yet have any customers.⁵

That is the case with CTVEA in 243 census blocks (identified on the Form 505 -2 which is being submitted by CTVEA along with its challenge) where CTVEA has deployed physical network assets capable of delivering broadband and voice services to prospective customers. It can generally deliver service within seven to ten days of a request, absent extraordinary

⁵ See *Connect America Fund*, Second Order on Reconsideration, WC Docket No. 10-90, 27 FCC Rcd 4648, ¶ 13 (2012) ("[A] provider may have no customers in a particular census block, even though it offers service there.").

measures. Further, CTVEA is actively marketing and advertising its service in these areas. Thus, CTVEA serves these blocks with voice and broadband service and these areas clearly do not "lack access to Internet."

The reasons that CTVEA does not have current customers in these areas are several. First, these are very rural areas with a low population density per census block. As a result, the number of potential customers per census block is significantly lower than in more populated urban and suburban area. Second, many of these census blocks are in areas where the income level is quite low, and residents may not have the means (or desire) to purchase broadband service. Nonetheless, CTVEA has deployed facilities in these areas and continues to offer services to the residents of these census blocks. For example, in July 2014 CTVEA completed construction of 11 route miles of fiber along Old Highway 431/Seale Highway (runs parallel to the current four lane Highway 431) into a remote, rural area of southwestern Russell County, Alabama in order to service the small rural community of Pittsview, Alabama. CTVEA connected its first broadband and phone customer near Pittsview at the end of July. This high-cost build area (less than 10 passings per mile, including the Pittsview community), was constructed entirely with private funds in order to provide service to this low density, low income rural area. In addition, CTVEA is contemplating a similar expansion of last mile build consisting of approximately 19 route miles along Highway 165 into a remote rural area of southeastern Russell County, Alabama, to ultimately service the residents of a the small rural communities of Cottonton and Jernigan. Highways 431 and 165 run parallel, respectively through the southwestern and southeastern portions of Russell County, Alabama, providing future opportunity to connect the interior areas between these two highways with broadband and

Commission must not create an uneven playing field by subsidizing price cap LECs in those areas where CTVEA has already deployed facilities through the expenditure of private capital.

III. CONCLUSION

Accordingly, CTVEA respectfully requests a limited waiver of the Bureau's evidentiary rule to permit CTVEA to submit evidence that it serves 243 census blocks (plus the 6 blocks in the Crawford Upgrade that are scheduled for completion in October 2014) by offering broadband and voice service to such areas. Grant of this waiver would permit the Bureau to determine that these areas are "served" for purposes of CAF Phase II challenges, and that Phase II support is therefore not permitted in such areas.

Respectfully submitted,

R.M. Greene, Inc. d/b/a
Cable TV of East Alabama,

By: Joan M. Budd

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Its: General Counsel

August 14, 2014